

Lionel Z. Glancy (#134180)  
lglancy@glancylaw.com  
Michael Goldberg (#188669)  
mmgoldberg@glancylaw.com  
GLANCY BINKOW & GOLDBERG LLP  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160

**NO JS-6**

Gregory S. Asciolla (pro hac vice)  
gasciolla@labaton.com  
Hollis L. Salzman (pro hac vice)  
hsalzman@labaton.com  
William V. Reiss (pro hac vice)  
wreiss@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ACE MARINE RIGGING & SUPPLY,  
INC.,

Plaintiff,

v.

VIRGINIA HARBOR SERVICES,  
INC., ET AL.,

Defendants.

No. SACV11-00436-GW(FFMx)

**RULE 54(b) FINAL JUDGMENT  
ORDER AS TO: (1) VIRGINIA  
HARBOR SERVICES, INC.,  
FENITEK MARINE SYSTEMS  
GMBH, ROBERT B. TAYLOR  
AND DONALD MURRAY; (2)  
MARINE FENDERS  
INTERNATIONAL AND GERALD  
THERMOS; (3) WATERMAN  
SUPPLY CO, INC. AND  
SEYMOUR WATERMAN; AND (4)  
MARITIME INTERNATIONAL,  
INC. AND JOHN DEATS**

Date: January 19, 2012  
Time: 8:30 A.M.  
Judge: The Honorable George Wu  
Ctm: 10

1 The Court has considered Plaintiff Ace Marine Rigging & Supply, Inc.'s  
2 Motion for Final Approval of Class Action Settlements with Defendants: (1)  
3 Virginia Harbor Services, Inc. ("VHS"), Fentek Marine Systems GmbH, Robert B.  
4 Taylor and Donald Murray ("VHS Defendants"); (2) Marine Fenders International  
5 and Gerald Thermos ("MFI Defendants"); (3) Waterman Supply Co., Inc. and  
6 Seymour Waterman ("Waterman Defendants"); and (4) Maritime International,  
7 Inc. and John Deats ("Maritime Defendants") (collectively, the "Settling  
8 Defendants") and has held a duly-noticed final approval hearing on January 19,  
9 2012. The Court expressly finds, pursuant to Rule 54(b) of the Federal Rules of  
10 Civil Procedure, that there is no just reason for delay, and therefore expressly  
11 directs the entry of Final Judgment as to the Settling Defendants:

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

13 1. The Court has jurisdiction over the subject matter of this litigation.

14 2. Terms used in this Final Judgment Order which are defined in the  
15 Settlement Agreements between the Plaintiff and the Settlement Classes on the one  
16 hand and the Settling Defendants on the other hand are, unless otherwise defined  
17 herein, used in this Final Judgment Order as defined in the Settlement Agreements.

18 3. The Court finds that the Foam-Filled Fenders and/or Buoys  
19 Settlements were based on vigorous arm's-length negotiations, which were  
20 undertaken in good faith by counsel with significant experience litigating antitrust  
21 class actions.

22 4. The Court finds that due and adequate notice was provided pursuant  
23 to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement  
24 Classes certified herein, notifying the Settlement Classes of, *inter alia*, the  
25 pendency of the above-captioned action and the proposed Foam-Filled Fenders  
26 and/or Buoys Settlements with the Settling Defendants. The notice provided was  
27 the best notice practicable under the circumstances and included individual notice  
28

1 by first-class mail to all members of the Settlement Classes who could be identified  
2 through reasonable effort as well as notice published in the *Investor's Business*  
3 *Daily* and in *Business Wire*. Notice fully complied in all respects with the  
4 requirements of Rule 23 of the Federal Rules of Civil Procedure and the due  
5 process requirements of the Constitution of the United States.

6 5. With respect to the VHS Defendants Settlement Agreement, this  
7 Court certifies the following class for settlement purposes only:

8 All persons and entities (but excluding Defendants, their  
9 predecessors, parents, subsidiaries, affiliates, and co-  
10 conspirators, United States federal government entities  
11 and the State of Florida and all Florida state and local  
12 government entities) who purchased Foam-Filled Fenders  
13 and/or Buoys in the United States directly from Settling  
14 Defendants, Named Co-Conspirators, any other  
15 Defendant or any of their predecessors, parents,  
16 subsidiaries, or affiliates at any time during the period  
17 from and including June 1, 2000 to and including  
18 December 31, 2005.

19  
20 With respect to the MFI Defendants, Waterman Defendants and Maritime  
21 Defendants Settlement Agreements, the Court certifies the following class for  
22 settlement purposes only:

23 All persons and entities (but excluding Defendants, their  
24 predecessors, parents, subsidiaries, affiliates, and co-  
25 conspirators and United States federal government  
26 entities) who purchased Foam-Filled Fenders and/or  
27 Buoys in the United States directly from Settling  
28

1 Defendants, Named Co-Conspirators, any other  
2 Defendant or any of their predecessors, parents,  
3 subsidiaries, or affiliates at any time during the period  
4 from and including June 1, 2000 to and including  
5 December 31, 2005.

6 6. For the purposes of this Order, “Foam-Filled Fenders” means  
7 structural protection marine fenders fabricated from an elastomer shell filled with  
8 closed-cell polyethelene foam, and related ancillary products, which are typically  
9 used as a cushion between ships and either fixed structures such as docks or piers,  
10 or floating structures such as other ships. “Foam-Filled Buoys” means buoys  
11 fabricated from an elastomer shell and filled with closed-cell polyethelene foam,  
12 and related ancillary products, which are used in a variety of applications,  
13 including as channel markers and navigational aids. “Foam-Filled Fenders and/or  
14 Buoys” means Foam-Filled Fenders and/or Foam-Filled Buoys.

15 7. The Court finds that certification of the Settlement Classes is  
16 appropriate because:

- 17 (a) The Settlement Classes are so numerous that joinder of all  
18 members is impracticable, satisfying the requirement of Rule  
19 23(a)(1);
- 20 (b) There are questions of law or fact common to the Settlement  
21 Classes, satisfying the requirements of Rule 23(a)(2), including:  
22 (1) did Defendants conspire to raise, fix, maintain or stabilize  
23 the prices, rig bids or allocate markets or customers of Foam-  
24 Filled Fenders and Buoys purchased in the United States in  
25 violation of Section 1 of the Sherman Act; (2) the period of  
26 time the conspiracy operated; and (3) whether the conspiracy  
27  
28

1 raised, fixed, maintained or stabilized the prices of Foam-Filled  
2 Fenders and/or Buoys;

3 (c) The claims of Representative Plaintiff Ace Marine Rigging &  
4 Supply, Inc. are typical of the claims of the Settlement Classes,  
5 satisfying the requirement of Rule 23(a)(3);

6 (d) The Representative Plaintiff will fairly and adequately protect  
7 the interests of the Settlement Classes, satisfying the  
8 requirements of Rule 23(a)(4);

9 (e) Questions of law or fact common to the members of the  
10 Settlement Classes, as set forth above, predominate over  
11 questions affecting only individual members and a class action  
12 is superior to other methods available for the fair and efficient  
13 adjudication of the controversy, satisfying the requirements of  
14 Rule 23(b)(3); and

15 (f) The action is manageable as a class action for settlement  
16 purposes.

17 8. The Court's certification of the Settlement Classes as provided herein  
18 is without prejudice to, or waiver of, the rights of any Defendant other than the  
19 Settling Defendants to contest certification of any other proposed classes. The  
20 Court's findings in this Final Judgment Order shall have no effect on the Court's  
21 ruling on any motion to certify any litigation class and no party may cite or refer to  
22 the Court's approval of the Settlement Classes as persuasive or binding authority  
23 with respect to any motion to certify such a class.

24 9. The Court finds that no Settlement Class Members have timely  
25 requested to be excluded from the Settlement Class(es).

26 10. The Court finds that the Settlement Agreements with the Settling  
27 Defendants are fair, reasonable and adequate to the Settlement Classes within the  
28

1 meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement  
2 Agreements are hereby approved pursuant to Rule 23(e) of the Federal Rules of  
3 Civil Procedure.

4 11. The Court finds that the escrow accounts described in the Settlement  
5 Agreements are qualified settlement funds (“QSFs”) pursuant to Internal Revenue  
6 Code Section 468B and the Treasury Regulations promulgated thereunder.

7 12. All claims of Plaintiff and the Settlement Classes that were asserted  
8 against the Settling Defendants in the Complaint in the above-captioned Action are  
9 dismissed with prejudice, and, except as provided for in the Settlement  
10 Agreements, without costs.

11 13. Plaintiff, Settlement Class Members, their predecessors, successors,  
12 past and present parents, subsidiaries affiliates, divisions, and departments, and  
13 each of their respective past and present officers, directors, employees, agents,  
14 attorneys, servants, and representatives, and the predecessors, successors, heirs,  
15 executors administrators, and assigns of each of the foregoing (“Releasing  
16 Parties”) are permanently barred and enjoined from prosecuting against Released  
17 Parties, as defined in the respective Settlement Agreements, any and all claims,  
18 demands, actions, suits, and causes of action, damages, liabilities of any nature,  
19 including without limitation costs, expenses, penalties, and attorneys’ fees, whether  
20 class, individual, or otherwise in nature, that Releasing Parties ever had, now have,  
21 or hereafter can, shall, or may have directly, representatively, derivatively or in any  
22 other capacity against the Released Parties, whether known or unknown, suspected  
23 or unsuspected, in law or equity, concerning the pricing, selling, discounting,  
24 marketing, manufacturing, or distribution of Foam-Filled Fenders and/or Buoys in  
25 the United States, which arise under and/or relate to any United States federal or  
26 state antitrust, unfair competition, unfair practices, price discrimination, unitary  
27 pricing, trade practice, or civil conspiracy law, including, without limitation, the  
28

Sherman Antitrust Act, 15 U.S.C. § 1 et seq., based in whole or in part on the facts, occurrences, transactions, or other matters alleged in, or that could have been alleged in the Class Action Complaint filed in *Ace Marine Rigging & Supply, Inc. v. Virginia Harbor Services, Inc. et al.*, No. SACV11-00436, the Class Action Complaint filed in *Ace Marine Rigging & Supply, Inc. v. Trelleborg AB*, No. 10-01553 and the Consolidated Amended Class Action Complaint filed in *In re Marine Products Antitrust Litigation*, No. CV10-2319-GW (FFMx) (the “Released Claims”), provided, however, that nothing herein shall release: (1) any claims made by purchasers who are solely indirect purchasers of Foam-Filled Fenders and/or Buoys as to such indirect purchases; (2) claims involving any negligence, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods or similar claim relating to Foam-Filled Fenders and/or Buoys; and/or (3) claims under laws other than those of the United States.

14. Each member of the Settlement Classes has expressly agreed to waive and release, and shall be deemed to have waived and released, any and all provisions, rights and benefits conferred by section 1542 of the California Civil Code, which reads:

Section 1542. Certain Claims Not Affected by General Release.

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor; and such release shall apply according to its terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law

1 or principle of any jurisdiction.

2  
3 15. Each member of the Settlement Classes may hereafter discover facts  
4 other than or different from those which he, she or it knows or believes to be true  
5 with respect to the claims which are the subject matter of the provisions of this  
6 paragraph, but each of those Settlement Class Members has expressly waived and  
7 has fully, finally and forever settled and released all rights and benefits existing  
8 under (i) Section 1542 or any equivalent, similar or comparable present or future  
9 law or principle of law of any jurisdiction and (ii) any law or principle of law of  
10 any jurisdiction that would limit or restrict the effect or scope of the provisions of  
11 the release set forth above, without regard to the subsequent discovery or existence  
12 of such other or different facts.

13 16. The Settling Defendants shall have no obligation for attorneys' fees,  
14 costs or expenses, except that VHS shall pay or cause to be paid reasonable costs  
15 of disseminating notice of the settlement, including the cost of administration, in  
16 an amount not to exceed \$25,000 as set forth in ¶ 31 of the VHS Defendants  
17 Settlement Agreement.

18 17. Nothing in this Final Judgment Order or the Settlement Agreements  
19 and no aspect of the settlements or negotiations thereof are or shall be deemed or  
20 construed to be an admission or concession of any violation of any statute or law or  
21 of any liability or wrongdoing by the Settling Defendants or of the truth of any of  
22 the claims or allegations in any of the complaints in the Action or any other  
23 pleading, and evidence thereof shall not be discoverable or used, directly or  
24 indirectly, in any way, whether in the Action or in any other action or proceeding  
25 other than to enforce the terms of this Final Judgment Order or the Settlement  
26 Agreements.

27 18. Without affecting the finality of the Final Judgment in any way, this  
28 Court hereby retains continuing jurisdiction for the purposes of, *inter alia*,

1 implementing and enforcing the Settlement Agreements (including any issue that  
2 may arise in connection with the formation and/or administration of the QSFs),  
3 entering orders regarding the disbursement of the Settlement Amounts (as defined  
4 in the Settlement Agreements) to the Settlement Classes and to Settlement Class  
5 Counsel, and adjudicating the Action with respect to Plaintiff's claims asserted  
6 against the non-settling Defendants.

7  
8 DONE AND ORDERED in Chambers in Los Angeles, California this 19th  
9 day of January, 2012.

10  
11 

12 HONORABLE GEORGE H. WU  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28